

# CONTRACT FOR DESIGNER SERVICES

This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_ the year 20\_\_ between the

\_\_\_\_\_  
\_\_\_\_\_  
street  
\_\_\_\_\_  
city, state, zip

Housing Authority,  
Phone No: \_\_\_\_\_  
Fax No: \_\_\_\_\_  
Email Address: \_\_\_\_\_

hereinafter called "the Authority", and

\_\_\_\_\_  
Designer  
\_\_\_\_\_  
street  
\_\_\_\_\_  
city, state, zip

Phone No: \_\_\_\_\_  
Fax No: \_\_\_\_\_  
Email Address: \_\_\_\_\_

hereinafter called the "Designer" to provide the Designer Services required to complete the Basic Services for DHCD Project # NNNNNN described hereinafter and in the Request for Designer Services dated MM/DD/YYYY attached hereto:

\_\_\_\_\_  
Description of project on RFS  
Project Construction Budget: \_\_\_\_\_.

For the performance of all services required under this Contract, and excluding those services that may become necessary under Articles 6 and 7, the Designer shall be compensated by the Authority as follows:

Fee for Basic Services: \_\_\_\_\_

IN WITNESS WHEREOF, the Authority, with the prior approval of the Department of Housing & Community Development (hereinafter called the "Department"), and the Designer have caused this Contract to be executed under seal by their respective authorized officers.

## AUTHORITY

\_\_\_\_\_  
print name  
\_\_\_\_\_  
print title  
By \_\_\_\_\_  
signature and seal  
Date \_\_\_\_\_

## DESIGNER

\_\_\_\_\_  
print name  
\_\_\_\_\_  
print title  
By \_\_\_\_\_  
signature and seal  
Date \_\_\_\_\_

APPROVAL OF DEPARTMENT  
Bureau of Housing Development and Construction  
Department of Housing and Community Development  
100 Cambridge St Suite 300  
Boston, MA 02114

By \_\_\_\_\_  
name  
\_\_\_\_\_  
title  
Date \_\_\_\_\_

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## **ARTICLE 1: DEFINITIONS**

**APPROVAL** -- a written communication from the Authority to the Designer approving the work for the current project phase with authorization to the Designer to proceed to the next Project phase, changes to the scope, compensation for Extra Services or Reimbursable Expenses, and other items for which an approval is necessary or appropriate.

**AUTHORITY** -- the Housing Authority identified on page one of this Contract.

**BASIC SERVICES** -- the services to be provided by the Designer as specified in the RFS (Attachment A).

**CONSTRUCTION HANDBOOK** -- a publication entitled Construction Handbook published by the Department which specifies the procedures that the Authority, Contractor, Department, and Designer shall follow during the Construction Phase and Completion Phase.

**CONTRACT** -- this Contract, inclusive of the RFS and all other Attachments, between the Authority and the Designer as approved by the Department; with all written revisions to this Contract or the RFS and all Approvals issued pursuant to this Contract.

**CONSTRUCTION CONTRACT DOCUMENTS** -- The Construction Contract Documents consist of the Owner-Contractor Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Drawings, Plans, Specifications, the Construction Handbook, all addenda to the design for Construction issued prior to execution of the Construction Contract, and other documents approved after execution of the Owner Contractor Agreement relating thereto.

**DESIGNER** -- the person or firm identified on page one of this Contract performing the Designer Services under this Contract. The Designer shall be: an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering, which satisfies the following:

- A. if an individual, the individual is a registered architect, landscape architect, or engineer;
- B. if a partnership, a majority of all the partners are persons who are registered architects, landscape architects, and/or engineers;
- C. if a corporation, sole proprietorship, joint stock company or other like entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, landscape architects, or engineers, and the person designated to have the project in his or her charge is registered in the discipline required for the project;
- D. if a joint venture, each joint venturer satisfies the requirements of this section.

**DESIGNER SERVICES** -- the services to be performed by the Designer and its sub-consultants or its subcontractors under this Contract. Services may include the following:

- A. preparation of master plans, studies, surveys, soil tests, cost estimates, and programs;
- B. preparation of drawings, plans, and specifications, including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications;
- C. supervision or administration of Contract Documents for Construction;
- D. construction management or scheduling.

**DEPARTMENT** -- the Massachusetts Department of Housing and Community Development.

**FEE FOR BASIC SERVICES** -- the fee to be paid to the Designer specified on the first page for satisfactorily performing the Basic Services required by this Contract; this fee does not include any additional compensation to which the Designer may be entitled pursuant to Articles 6 and 7. Payments shall be made in accordance with the designer fee payment schedule found in the RFS.

**GENERAL CONTRACTOR** -- The Contractor (s), sometimes referred to as the General Contractor, is the person or entity identified as such in the Contract Documents for Construction. The term includes the Contractor's authorized representatives.

**MASSACHUSETTS GENERAL LAWS (MGL)** -- the General Laws of the Commonwealth of Massachusetts, as amended, including any regulations promulgated in connection with such laws.

**MBE/WBE** -- a minority-owned business or a women-owned business certified by the State Office of Minority and Women Business Assistance (SOMWBA).

**OWNER-CONTRACTOR AGREEMENT** -- the Contract between the Owner and the General Contractor for construction of a whole or part of the Project including approved change orders.

**PROJECT** -- the Project to be designed as specified in the RFS.

**REQUEST FOR DESIGNER SERVICES (RFS)** -- the written document appended hereto as Attachment A specifying various requirements including the project site, scope of services, submission requirements, schedule, and construction budget.

**SUB-CONSULTANT** -- any person or entity having a direct contractual relationship with the Designer, pursuant to which such person or entity provides Basic Services on behalf of the Designer for the Project.

**SUBCONTRACTOR** -- any person or entity having a direct contractual relationship with the Designer, pursuant to which such person or entity provides services other than Basic Services for the Project, for which the Designer is entitled to be reimbursed under Article 7.

## **ARTICLE 2: RESPONSIBILITIES OF THE AUTHORITY AND THE DEPARTMENT**

- 2.1.1 The Authority is the owner of the Project that will be built pursuant to the Contract. The Department is responsible for providing some or all of funding for the Project and establishing development and design guidelines and standards. The Authority administers the Contract for Designer Services to ensure that the design meets the Authority's needs, conforms to the guidelines and standards established by the Department, and complies with the requirements specified in the RFS. Both the Authority and the Department provide direct oversight of the Designer's work.
- 2.1.2 The most recent version of the Department's Construction Handbook is incorporated by reference into this Contract. It is one of the Contract Documents for Construction.
- 2.2 To the extent such data is available, the Authority shall furnish to the Designer surveys of the Project site, existing building plans, borings, test pits, mechanical or other test data, photographs and utility information. However, the Authority does not guarantee the sufficiency or accuracy of the information furnished to the Designer under this paragraph 2.2. Therefore, the Designer must satisfy itself as to the sufficiency and accuracy of data supplied by the Authority and notify the Authority in writing of any deficiencies in such data.

## 2.3 Actions by the Department or Authority

- 2.3.1 Upon review by the Authority and the Department and upon the recommendation for approval by the Department, the Authority shall render all approvals required by this Contract in writing to the Designer. If approval is withheld the Authority shall notify the Designer in writing why such approval is being withheld.
- 2.3.2 The Department and Authority shall not unreasonably withhold any approval, acceptance, or consent required under this Contract.
- 2.3.3 The Authority and the Department shall each promptly review all submissions and may meet with the Designer to discuss those submissions. Upon completion of its review, and upon the recommendation of the Department, the Authority shall:
  - 2.3.3.1 approve the submission as made; or
  - 2.3.3.2 approve that part of the submission that is acceptable and reject the remainder; or
  - 2.3.3.3 reject the submission; or
  - 2.3.3.4 require the Designer to submit additional information or details in support of its submission.
- 2.3.4 The Designer performance time table found in the RFS specifies the phases the Designer shall use for scheduling its work under this Contract for Designer Services. If the Authority or the Department fails to complete its review of a particular matter within the time periods specified, such failure shall not, standing alone, give rise to any additional rights under this Contract, including the right to extra compensation to the Designer.

## 2.4 Payments to Designer

Upon satisfactory completion of services performed in each phase under this Contract, the Authority shall make payments to the Designer as provided in Articles 5, 6, 7 and the RFS.

# **ARTICLE 3: RESPONSIBILITIES OF THE DESIGNER**

## 3.1 Basic Services

The Designer's Basic Services consist of the work in the phases described in Articles 16, 17, and the RFS, and include all necessary sanitary, structural, fire protection, civil, mechanical and electrical engineering; energy evaluations; detailed cost estimates; site planning and landscape planning; all aspects of architectural design; preparation of construction documents; bidding and administering the Contract Documents for Construction.

## 3.2 Design Quality and Standards

- 3.2.1 The Designer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates and other work furnished by the Designer and the Designer's sub-consultants or subcontractors. Changes, corrections, additions or deletions requested by the Authority and the Department shall be incorporated into the design of the Project unless detailed objections thereto are received from the Designer and subsequently approved by the Authority and the Department.
- 3.2.2 The Designer shall complete the services specified in the RFS and required under this Contract meeting the schedule and submission dates established in the RFS or as they may be modified by written approvals from the Authority and the Department.

3.2.3 The Designer services shall be performed in conformance with the Guidelines and Standards for this Project which shall be distributed by the Department at the kick-off meeting.

3.2.4 The Designer services shall be performed in conformance with applicable federal, state, and local laws, ordinances and regulations.

### 3.3 Additional Tests, Surveys, Etc.

The Designer shall be responsible for determining the types of testing required for the Project, and shall obtain services from subcontractors. Both the services and the subcontractors shall be approved by the Authority and Department. Such services shall be paid for as provided in Article 7- Reimbursable Expenses unless such services are specifically included as Basic Services in the RFS. Such services may include but need not be limited to:

3.3.1 Site surveys, borings, and test pits;

3.3.2 Structural tests on buildings to be rehabilitated;

3.3.3 Soil tests.

### 3.4 Design Within Construction Budget

3.4.1 The Designer shall prepare cost estimates for the Project to be included with each phase submission or at more frequent intervals as required in the RFS. Unless otherwise specified in the RFS, the cost estimates are considered Basic Services and the Designer is **not** eligible for any additional compensation for preparing same. The format for cost estimates shall be as approved by the Department.

3.4.2 The Department has established the Project Construction Budget, the amount of which is listed on page one of this Contract for Designer Services. The Designer shall produce a design for the Project meeting the requirements of the scope of work specified in the RFS to be constructed within the Construction Budget. In the event the Designer's cost estimate for the project exceeds the Construction Budget, the Authority and the Department may require the Designer to revise the design to keep the cost estimate for the Project within the Construction Budget. The Designer shall not be entitled to extra compensation for making such revisions to contain costs within the budget.

3.4.3 The Designer must receive written approval of the Authority and the Department before the Construction Budget shall be considered revised.

### 3.5 Ownership of Documents

3.5.1 All studies, designs, materials, and submissions, collectively referred to as "submissions", prepared under this Contract shall be the property of the Authority, and at the completion or termination of the Designer's Services, shall be promptly turned over to the Authority. The Authority shall have all right, title and interest in such submissions, including any rights under copyright law, whether express or implied.

3.5.2 The Authority or the Department may re-use the design and submissions made under this Contract, or any portions thereof, for other projects, in which event the Designer shall have no liability to the Authority or the Department for such re-use, nor shall the Designer be entitled to any additional compensation for such re-use. For any such re-use, the Designer who originated those designs will not be credited or appear as the author of the new work.

3.6 Project Architect and/or Project Engineer

The Designer shall designate an individual as its Project Architect or Project Engineer. Such Project Architect or Project Engineer shall be a registered architect, engineer or landscape architect as required by the RFS and shall be the person who shall oversee the performance of the all services provided on the Project.

3.7 Time Is of the Essence

The time in which the Designer shall perform and complete the services specified in the RFS, Article F, is of the essence of this Contract.

**ARTICLE 4: SUB-CONSULTANTS, SUBCONTRACTORS**

- 4.1 The Designer may employ sub-consultants in order to perform the Basic Services described in the RFS. Additionally, the Designer may employ subcontractors to perform those services described in paragraph 3.3 or any other services which are not Basic Services described in paragraph 3.1. If sub-consultants or subcontractors are employed for these purposes, they must be registered in the necessary disciplines for the services if registration is required under the applicable General Laws. The employment of sub-consultants or subcontractors shall not in any way relieve the Designer from its responsibilities for its work, including for coordination and ensuring professional and technical accuracy of all data, designs, drawings, specifications, estimates and other work or material furnished under this Contract by the sub-consultants or subcontractors.
- 4.2 When the Designer receives payment from the Authority, the Designer shall promptly make payment to each sub-consultant or subcontractor whose work was included in the work for which such payment was received unless payment has been theretofore made. The Authority shall have the contractual right in and under each sub-consultant contract to investigate any breach of such contract and to specify corrective measures it determines are necessary and in the best interest of the Authority and the Department and the Designer and sub-consultant shall forthwith take such corrective measures.

**ARTICLE 5: COMPENSATION**

- 5.1 For the performance of all Basic Services required in this Contract and not including Extra Services and Reimbursable Expenses provided pursuant to Articles 6 and 7, the Designer shall be compensated by the Authority in the amount specified as the Fee for Basic Services on page 1 as that fee may be amended by written amendment to this contract.
- 5.2 Payment Schedule
- Upon satisfactory completion of each phase, progress payments for Basic Services shall be made by the Authority. The Authority and Department shall signify satisfactory completion by written acceptance and approval of the design phase submission. The amount of such progress payment is set out in the schedule in section I of the RFS specifying the percentage of the Basic Services Fee to be paid at such time as the schedule may have been amended by written amendment to this contract.
- 5.3 The Authority shall make payments to the Designer within 30 days of the Authority's approval of an invoice from the Designer.



5.5 Installment Payments During Construction

- 5.5.1 The Designer shall be paid Thirty percent 30% of the Fee for Basic Services during the construction period (unless some other percentage is specified in the RFS).
- 5.5.2 Payments to the Designer during construction shall be made monthly and the amount of each payment shall be commensurate with the percent of satisfactory completion of Construction which shall be certified by the Designer on the Contractor's monthly Applications for Payment.
- 5.5.3 Ninety-five percent payment shall be due to the Designer upon the Department's Approval of the Certificate of Substantial Completion of construction.

5.6 Final Installment

The Designer shall be paid the unpaid balance of the Fee for Basic Services (as that fee may be amended), upon:

- 5.6.1 Approval by the Department of the Certificate of Final Completion of construction. In cases where the Department approves a Certificate of Partial Release of Retainage, the sum of \$500 shall be retained until a Certificate of Final Completion is approved.
- 5.6.2 Delivery by the Designer to the Authority of the Record Drawings required by this contract.
- 5.6.3 Submission of Attachment F verifying payment to MBE/WBE sub-consultants or subcontractors as required by paragraph 15.5, and
- 5.6.4 A written evaluation of the Contractor by the Designer from which the Authority shall be able to complete its submission of the Contractor Evaluations as required by MGL c.149 §44D(7).

5.7 Substantial Change

- 5.7.1 If there is a substantial change in the services specified in the RFS to be provided by the Designer under this Contract, the Designer, the Authority and the Department will mutually agree to a written amendment describing the services and an amended Fee for Basic Services to reflect the change and reasonable cost of such change. Such changes shall be designated on Attachment E and shall be executed by the Designer and the Authority, with the prior approval of the Department. Sub-paragraph 5.7.2 may apply to such changes.
- 5.7.2 Amendments to the contract may need to be reviewed by the Designer Selection Committee. The Department will inform the Authority and Designer when and if such review is required.
- 5.7.3 Should the Designer, the Authority, and the Department be unable to negotiate a mutually acceptable amendment to the Fee for Basic Services when there has been a substantial change in the specified services, the Authority and the Department shall unilaterally and promptly determine, in good faith, a reasonable dollar amount for the services as amended and shall process payments to the Designer based upon such amended fee, provided that the Designer's acceptance of such payments shall not be considered a waiver by the Designer of its right to pursue a claim for additional compensation (pursuant to Article 10) related to the change in services. In no event shall the Designer stop work under this Contract due to a disagreement with the Authority and the Department regarding an amendment in the Designer's Fee for Basic Services.

## **ARTICLE 6: EXTRA SERVICES**

### **6.1     General**

- 6.1.1     Extra Services are any services requested by the Authority to be performed by the Designer in addition to the services which are Basic Services. The cost of extra services is not included in the Fee for Basic Services and shall be in addition thereto.
- 6.1.2     A proposal for cost, scope and schedule of extra services shall be presented to the Authority and the Department in writing by the Designer and approved as extra services by the Authority in writing prior to the performance of these services.

### **6.2     Unless specifically included in the RFS as Basic Services the Designer shall perform any of the following services as extra services for which an additional fee will be payable:**

- 6.2.1     preparing documentation for existing buildings when such documentation does not exist;
- 6.2.2     assistance in pursuing an application for a comprehensive permit or for the appeal of a denial or an approval with conditions of such permit to the Housing Appeals Committee;
- 6.2.3     revising previously approved reports, drawings, specifications or other documents to address changes authorized by the Authority and Department, except revisions prepared by the Designer to keep costs within the Project Construction Budget, or to correct incorrect items for which the Designer has responsibility;
- 6.2.4     preparing documents for bidding alternates requested by the Authority and Department, except alternates to keep costs within the Project Construction Budget which shall be Basic Services;
- 6.2.5     revising Contract Documents for Construction which have been initially submitted in their final and complete form, if general bids are not advertised based on such Construction Contract Documents within six months after initial submission;
- 6.2.6     services in connection with rebidding if the need to rebid is not attributable to the Designer;
- 6.2.7     attending meetings at the Authority, the Department, Department of Labor and Workforce Development or the Office of Attorney General in matters of dispute if attendance is required by the Authority or the Department, provided such dispute did not arise due to the fault of the Designer.
- 6.2.8     furnishing other services in excess of Basic Services made necessary by the default of the General Contractor;
- 6.2.9     providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
- 6.2.10    preparing change orders and supporting data in accordance with Article 8;
- 6.2.11    assisting the Authority in litigation or claims arising out of the Construction Contract, provided such litigation or claims did not arise due to the fault of the Designer;
- 6.2.12    performing services during a construction period extended beyond the additional 60 calendar day period, specified in paragraph 6.3.;
- 6.2.13    performing professional services which are not otherwise required or which could not reasonably have been anticipated under this Contract as Basic Services.

- 6.3 Construction Phase Services Provided after the Original Construction Completion Date
- 6.3.1 If construction has not reached substantial completion within the original construction period (as set forth in the Owner Contractor Agreement), there shall be added to said construction period a period of 60 calendar days, during which period the Designer shall continue to provide construction phase services for which no extra compensation shall be paid.
- 6.3.2 If construction has not reached substantial completion after the 60 additional calendar days, the Designer shall thereafter be entitled to additional compensation for attending job meetings, and preparing and distributing job meeting minutes until construction is completed. Other construction phase services during this period shall be considered basic services, for which the Designer shall not be entitled to extra compensation, except for services that are extra services described in paragraph 6.2. In no event shall the Designer, be entitled to any additional compensation on account of an extended construction period, if the Authority and the Department have determined that the Designer's acts or inactions have caused the construction period to be extended.
- 6.4 In the event of an emergency the Designer may proceed to perform extra services as required to meet the emergency after obtaining the verbal approval of the Authority. The Designer shall provide a written report to the Authority, as soon after the emergency arises as possible, and such report shall describe the emergency and the extra services that were performed.
- 6.5 Invoices for extra services shall be accompanied by a complete breakdown listing the name of the service provider, service provided, payroll title, date, number of hours by day, hourly rate and total amount, for extra services performed.
- 6.6 For any extra services provided pursuant to this Article, the Designer shall be compensated by the Authority at the rate of **\$115 per hour** for the time of the principal of the Designer, or the principal of a sub-consultant hired as provided in paragraph 4.1, above. Compensation for technical employees of the Designer or its sub-consultants, shall be at the rate of two and one-half (2 1/2) times the wages of such employees, provided that in no event shall the compensation for a technical employee exceed the total sum of **\$90** per hour.

#### **ARTICLE 7: REIMBURSABLE EXPENSES**

- 7.1 For coordination and responsibility for the work described in the following sub-paragraphs 7.1.1 through 7.1.6 the Designer shall be reimbursed its actual costs, supported by invoices or receipts, plus 10%. The following are reimbursable expenses:
- 7.1.1 The actual cost to the Designer for subcontractors and for additional tests under 3.3 provided, however, that reimbursement for such costs shall not be made unless the rates of compensation, the total estimated cost of the services and the scope of work for said services shall have been previously approved in writing by the Authority and Department.
- 7.1.2 The cost of printing more than five (5) sets of design submissions per design phase.
- 7.1.3 The cost of printing the bid documents and the related postage during the bid period.
- 7.1.4 The cost of printing the mylar reproductions of the construction drawings for use in preparing the record drawings.
- 7.1.5 Out of pocket expenses paid by the Designer such as filing fees, and permit fees if such fees would be normally paid by the Authority.
- 7.1.6 Other expenses deemed necessary or appropriate by the Authority and the Department in writing.

7.2 Non-Reimbursable Expenses

The Authority shall not reimburse the Designer, its sub-consultants or subcontractors for travel expenses, telephone, copying, postage and delivery expenses or cost estimating, unless such expenses are specifically specified as reimbursable expenses in the RFS.

- 7.3 The Designer shall not be entitled to compensation under this Article for the services of sub-consultants hired to perform Basic Services under paragraph 3.1. If a sub-consultant in addition to performance of Basic Services performs extra services approved by the Authority and the Department, compensation for such extra services shall be made as provided in Article 6.

7.4 Reimbursements for the Project Representative

A Project Representative shall be hired by the Designer and approved by the Authority and Department as provided in the Construction Handbook unless the Department waives this requirement.

7.4.1 If the Project Representative is hired as an employee of the Designer, the Authority shall reimburse the Designer for the Project Representative's salary amount plus ten percent plus the Designer's additional expenses for the employee, including the cost of premiums for workers' compensation, the employer's contribution to Social Security, the employer's contribution to health insurance premiums, and other usual benefits provided by the Designer to its employees. Verification that these expenses have been paid shall be provided to the Authority by the Designer with invoices for payment. The amount of the salary and related expenses shall be approved by the Authority and the Department at the time of their approval of the Project Representative.

7.4.2 If the Project Representative is hired as a subcontractor to the Designer, the Authority shall reimburse the Designer for the actual cost plus ten percent.

**ARTICLE 8: COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS**

- 8.1 A Change Order is a written instrument prepared by the Designer and signed by the Authority, Department, Contractor, and Designer, stating their agreement on a change in the Project, including a change in the Contract Sum or Contract Time, specified in the Contract Documents for Construction.
- 8.2 The Designer shall be entitled to extra services compensation for preparing change orders requested by the Authority provided that the request is approved by the Department.
- 8.3 The Designer shall be entitled to extra services compensation for preparing change orders necessary and sufficient for additional work that could not have reasonably been anticipated by the Designer as part of Basic Services, as determined by the Authority and the Department.
- 8.4 The Designer shall not be entitled to extra services compensation for preparing change orders to adjust the scope of construction work which arise from existing conditions and for which unit prices have been specified in the Contract Documents for Construction.
- 8.5 The Designer shall not be entitled to extra services compensation for preparing change orders necessary for additional work that could have reasonably been anticipated by the Designer as part of Basic Services, as determined by the Authority and the Department.
- 8.6 Change orders for which the Designer is not entitled to compensation may be referred to as "no fee change orders."

- 8.7 The fact that the Designer is not entitled to compensation for preparing a change order shall not limit any legal remedies which the Authority may have for recovering additional costs necessitated by the change order.

#### **ARTICLE 9: RELEASE AND DISCHARGE**

The acceptance by the Designer of payment of the last installment under the provisions of paragraph 5.6, or a final payment under the terms of Article 11 in the event of termination of the contract, shall in each instance, operate as and be a release to the Authority and the Department and their employees and agents, from all claims of the Designer and its sub-consultants and subcontractors for payment for services performed and/or furnished, except for those written claims submitted by the Designer to the Authority or Department with, or prior to, the last invoice.

#### **ARTICLE 10: DISPUTES**

- 10.1 In the event of a dispute arising under this Contract, the disputing party shall notify the other party of the nature of the dispute, in writing, with a copy to the Department. If the dispute arises before performance of specific work related to the dispute, the written notice shall be submitted prior to commencing such work. In any event, the Designer shall proceed with the disputed work in compliance with the instructions of the Authority, provided such instructions are made with the concurrence of the Department. Such compliance shall not be a waiver of either party's rights to make a claim on the disputed matter, provided it has notified the other party in writing as stipulated above.
- 10.2 If the dispute cannot be resolved between the parties themselves, either party may request the Department's project management staff to review the disputed matter. After review of the matter, the Department's project management staff shall attempt to mediate and resolve the dispute.
- 10.3 In the absence of a resolution of the dispute under paragraph 10.2, either party may request the Department's Director of the Project Management Unit, or his/her designee, to convene a formal review meeting between the Designer, the Authority, and the Department's project management staff to evaluate the dispute. Within 30 days of such meeting, the Unit Director or his/her designee, shall issue a written response to the Designer and the Authority evaluating the dispute and stating the Department's position regarding the dispute. Such written decision shall be the Department's final decision regarding the dispute.
- 10.4 The existence and/or utilization of the foregoing dispute procedure under subparagraphs 10.2 10.3 shall not affect or limit the Designer's or the Authority's rights or remedies available at law or in equity (including specific performance or claim for damages) for a breach of any term or condition of the Contract.

#### **ARTICLE 11: ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD**

##### **11.1 Assignment**

If the Designer assigns or transfers any part of its services or obligations under this Contract (other than as specified in Article 4), it must obtain the prior written approval of the Authority and the Department. Any successor to the Designer must first be approved in writing by the Authority and the Department before performing any Designer services under this Contract. In the absence of specific provisions to the contrary written consent shall not in any way relieve the Designer from its responsibilities for coordination and completeness and accuracy of all data, designs, plans, drawings, specifications, estimates and other work or materials furnished under this Contract.

## 11.2 Suspension

- 11.2.1 The Authority, with the prior approval of the Department, may, at any time, by written notice to the Designer, suspend this contract. If the Authority provides such written notice to the Designer, the Designer shall cease all work under this contract but shall be entitled to compensation for services satisfactorily performed prior to notice of such suspension.
- 11.2.2 If a written notice of suspension issued pursuant to sub-paragraph 11.2.1 lasts for more than 90 consecutive calendar days, the Designer shall, upon resumption of the Contract, be entitled to additional compensation due to such suspension, as follows provided that the suspension was not attributable to the Designer's fault:
  - 11.2.2.1 The Designer shall receive a lump sum remobilization fee equal to 5% of that part of the fee for Basic Services received prior to the effective date of the suspension.
  - 11.2.2.2 Commencing on the ninety-first day of the suspension period, the Designer's fee for Basic Services remaining to be paid on the Contract shall be increased by .5% for each full month that the suspension remains in effect until the Designer's services on the Contract resume.
- 11.2.3 The Designer may request the Authority to provide a status report on the progress of the Project and the Authority shall respond to such request within fourteen days of receipt.
- 11.2.4 The Designer may, in writing, submit a request to the Authority to issue a written suspension of the Contract. The Authority shall respond to such written notice of suspension request within fourteen days of receipt.

## 11.3 Termination

- 11.3.1 By written notice to the Designer, the Authority, with prior written approval of the Department, may terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Designer, all compensation and reimbursement due to the Designer in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, including proportionate payment for portions of the work started but incomplete at the time of termination, shall be paid to the Designer.
- 11.3.2 By written notice to the Authority, the Designer may terminate this Contract:
  - 11.3.2.1 if the Authority, within sixty (60) days following written notice from the Designer of any default by the Authority under the Contract, shall have failed to cure such default; or
  - 11.3.2.2 if, after the Designer has performed all services required during any phase prior to construction and at least six (6) months have elapsed without receipt by the Designer of approval to proceed with the next phase of the Project, provided the delay was not the fault of the Designer. This provision shall not apply to a Designer who has received a notice of suspension pursuant to paragraph 11.2.
  - 11.3.2.3 Upon a proper termination by the Designer, the Designer shall be compensated as provided in sub-paragraph 11.3.1 above.

#### 11.4 No Award of Construction Contract

If the Construction Contract is not awarded by the Authority within one hundred twenty (120) days after the receipt of general bids for the Project and the bids having not been rejected and the project has not been suspended, the Designer shall be paid as if a contract for construction were awarded per the payment schedule provided in the RFS. This paragraph 11.4 does not apply, however, if the Designer has been directed to perform design revisions pursuant to paragraph 3.4.2, for the purposes of bringing the design of the Project within the Construction Budget.

### **ARTICLE 12: NOTICES**

Any notice required to be given by the Authority or Department to the Designer, or by the Designer to the Authority or Department, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Designer or the Authority or Department at the addresses specified on page one of this Contract or such other address of which the party may have been given notice hereunder. Notices to the Department shall be sent to the attention of the Director of the Project Management Unit

### **ARTICLE 13: INDEMNIFICATION OF AUTHORITY AND DEPARTMENT**

- 13.1 The Designer shall defend, indemnify and hold harmless the Authority and the Department, their officers, agents and employees, against any and all liability, loss, damages, costs or expenses for personal injury or damage to real or tangible personal property which the Authority or the Department may sustain, incur or be required to pay, arising out of or in connection with services performed under this Contract, by reason of any negligent action or inaction or willful misconduct of the Designer, a person employed by the Designer, or any of its sub-consultants or subcontractors; provided that:
- 13.1.1 The Designer is notified of any claim within a reasonable time after the Authority becomes aware of it; and
- 13.1.2 The Designer is afforded an opportunity to participate in the defense of such claim.
- 13.2 In the event the Designer assumes its obligations to defend, indemnify and hold harmless the Authority and the Department pursuant to paragraph 13.1, the Designer shall have the right to disapprove any negotiated settlement of such claim.

### **ARTICLE 14: INSURANCE**

#### 14.1 Professional Liability Insurance

- 14.1.1 In accordance with MGL c.7, §38H(f), the Designer shall, at its own expense, obtain and maintain a Professional Liability Policy covering errors, omissions or negligent acts arising out of the performance of this Contract in an amount stated in the RFS but in no event less than 10% of the Project Construction Budget. Insurance coverage in excess of \$1,000,000.00 shall not be required, unless so stated in the RFS. The Designer may have a Professional Liability Policy with a deductible which exceeds \$15,000 if it submits a statement of current net worth to the Authority and the Department demonstrating to the Authority's and the Department's satisfaction that it has financial resources sufficient to pay any such deductible amount.
- 14.1.2 The coverage shall be in force from the time of execution of this Contract until two (2) years beyond the date when the Certificate of Final Completion of Construction is executed. Such insurance may be written on a year-to-year basis. The Designer shall immediately notify the Authority should coverage become unavailable or should there be a change in its insurer during the coverage period.

14.1.3 Certificates as to insurance and as to each renewal of a policy substantiating that required insurance coverage is and continues in effect shall be filed with the Authority upon entry of this contract and annually thereafter. Notice of any cancellation of insurance, whether by the insurers or by the insured, shall be given in writing by the insurer or the insured to the Authority, at least fifteen days prior to the intended effective date of cancellation, which date should be specified in said notice.

#### 14.2 Workers' Compensation Insurance

The Designer shall, before commencing performance of this Contract, provide, by insurance, for the payment of compensation and the furnishing of other benefits in accordance with MGL c.152, as amended, to all persons employed by the Designer and shall continue such workers' compensation insurance in full force and effect during the term of the Contract.

#### 14.3 Asbestos and Hazardous Materials

14.3.1 Unless otherwise provided in the RFS, the Designer shall have no responsibility for the discovery, presence, handling, removal or disposal of or for the exposure of persons to hazardous materials in any form at the Project, including but not limited to asbestos-containing materials or other hazardous materials, as defined in MGL c.21E §2.

14.3.2 In the event that the Designer employs the services of a sub-consultant or subcontractor to provide services related to either the testing for asbestos-containing materials or hazardous materials or related to the specification of methods and procedures for the removal or remediation of such asbestos-containing materials or hazardous materials, the Designer shall employ such sub-consultants or subcontractors who have liability insurance coverage covering such services, to the extent that such insurance coverage is generally available to sub-consultants or subcontractors. The Designer shall, upon the Authority's written request, assign to the Authority the Designer's contractual right to pursue a claim against such sub-consultants or subcontractors.

### **ARTICLE 15: STATUTORY REQUIREMENTS**

#### 15.1 Governing Law

This Contract shall be governed by the laws of the Commonwealth of Massachusetts.

#### 15.2 Agent for Service of Process

If the Designer's principal place of business is outside of the Commonwealth of Massachusetts, the Designer shall appoint an agent for the service of process as provided in M.G.L. c.227, §5. The power of attorney reflecting such appointment shall be filed with the Secretary of State as provided in M.G.L. c.227, §5. Copies of the power shall be provided to the Authority and Department. There shall be no lapse in such agency for as long as the Designer may have potential liability.

#### 15.3 Truth-in-Negotiations Certificate (MGL c.7, §38H)

If the Designer's fee has been negotiated, the Designer must file a truth-in-negotiations certificate prior to execution of this Contract by the Authority. The certificate shall contain:

15.3.1 A statement that the wage rates and other costs used to support the Designer's compensation are accurate, complete, and current at the time of contracting; and



- 15.3.2 An agreement that the original Fee for Basic Services and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Authority determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.
- 15.4 Certification Pursuant to MGL c.7 §38H (e): In accordance with MGL c.7 §38H(e), the person signing this contract certifies, as a duly authorized signatory of the Designer, that the Designer has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract for Designer Services; no sub-consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Designer, sub-consultant or subcontractor of a contract by the Designer; and no person, corporation or other entity, other than a bona fide full-time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Contract for Designer Services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract to the Designer.
- 15.5 Minority-Owned and Woman-Owned Business Participation: If the Fee for Basic Services for this Contract is \$50,000.00 or more, the Designer shall subcontract a minimum of ten percent (10%) of its work to SOMWBA Certified M/WBE firms. Seven percent (7%) shall be for minority-owned enterprises (MBEs) and three percent (3%) shall be for women-owned enterprises (WBEs) certified by the State Office of Minority-and-Women-Owned Business Assistance, SOMWBA, 10 Park Plaza Suite 3740, Boston, MA 02116. A directory of SOMWBA certified firms can be located on SOMWBA's website, [www.state.ma.us/somwba](http://www.state.ma.us/somwba). If the Designer is a SOMWBA certified MBE or WBE the requirements in this paragraph 15.5 are not applicable.
- 15.5.1 The Designer shall complete and submit at the time of contract execution a completed Participation Schedule which is attached to this contract as Attachment B in order to be in compliance with paragraph 15.5 above.
- 15.5.2 The Department has the right, in its sole discretion, to waive all, or a portion of the requirements of paragraph 15.5 upon receiving from the Designer prior to contract execution documentation indicating the reason(s) for its inability to comply with the requirement of paragraph 15.5.
- 15.6 Accounting Requirements: The Designer shall cause to be maintained complete, accurate and detailed records of all time devoted to the Project by the Designer and each sub-consultant or subcontractor employed by the Designer. The Authority, the Department, and the Commonwealth's Inspector General may at all reasonable times audit such records that directly pertain to this Contract. On a Contract where the Fee for Basic Services exceeds \$100,000 the Designer shall comply with MGL c.30 §39R which requires the Designer to:
- 15.6.1 Maintain accurate and detailed accounts for a six-year period after the final payment;
- 15.6.2 File with the Authority annual audited financial statements.
- 15.6.3 Internal Management and Financial Controls. The Designer shall file with the Authority a statement on Internal Accounting Controls on its letterhead as prescribed in Attachment C and a statement from an independent certified public accountant (CPA) on its letterhead as prescribed in Attachment D to this contract.
- 15.7 Revenue Enforcement and Protection Program (REAP): Pursuant to MGL c.62C §49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the Designer and/or individuals in the Designer are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

15.8 Interest of Designer

The Designer covenants that:

- 15.7.1 he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would unlawfully conflict in any manner or degree with the required services to be performed under this Agreement or which would violate MGL c.268A, as it may be amended;
- 15.7.2 in the performance of this Agreement, no person having any such interest shall be employed by the Designer, and
- 15.7.3 no partner or employee of the Designer is an immediate family member (as defined in 760 CMR 4.02) of any Authority Board member or employee of the Department.

15.9 Equal Opportunity

The Designer shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces or presence of children, or political preference. The contractor shall comply with all applicable antidiscrimination laws including MGL c.151B.

15.10 Certification of Non-Collusion

The signatory certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

15.11 Worker Documentation Certification

In accordance with Executive Order 481 the undersigned further certifies under the penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of this contract; that pursuant to federal requirements, the Contractor shall verify the immigration status of all workers assigned to such contract without engaging in unlawful discrimination; and that the it shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the contract period may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

**ARTICLE 16: PHASES OF THE WORK: GENERAL INFORMATION**

- 16.1 The Designer shall discuss with the Authority and the Department the requirements for each phase before beginning work on that phase.
- 16.2 The Authority and the Department will review and approve the Designer's submissions for each phase of the work, as described in the RFS and Article 17. At least five copies of each submission shall be provided as part of Basic Services.
- 16.3 The description of Designer services required during the various phases of the work as described in the RFS and Article 17 may include specification of the number of submissions the Designer will be required to make and estimates of the approximate number of meetings that the Designer will be required to prepare for and attend during each phase. Notwithstanding these estimates, the schedule set out in the RFS sets forth the actual schedule for the Designer services required to be maintained under this Contract unless modified in writing by the Authority and Department.

- 16.4 If the Designer is required to make submissions in excess of the number specified or if the Designer is required to prepare for and attend meetings in excess of the number specified for a Phase, the Designer shall be entitled to compensation for extra services, provided, however, that in no event shall the Designer be entitled to such compensation if the Department shall have reasonably determined that the additional submissions or the additional meetings were required, in whole or in part, due to either the Designer's lack of preparation, or other fault due to deficiencies or omissions in documents prepared by the Designer.
- 16.5 The Designer shall prepare and distribute meeting notes of all meetings with the Authority and/or the Department and other meetings about the Project to all persons specified by the Authority.
- 16.6 The Designer shall attach a completed Designer Document Submission Transmittal Form to each submission. The form is available from the Department.

#### **ARTICLE 17: PHASES OF THE WORK**

##### **17.1 Conceptual Phase**

The RFS (Attachment A) specifies the work to be performed during this phase.

##### **17.2 Schematic Design Phase**

The RFS (Attachment A) specifies the work to be performed during this phase. In addition those items listed below are required during this phase.

17.2.1 The Designer shall present and explain the Schematic Design to the Authority Board of Commissioners.

17.2.2 The Designer shall present and explain the Schematic Design to the Local Residents Organization, if any such organization has interest.

##### **17.3 Design Development Phase**

The RFS (Attachment A) specifies the work to be performed during this phase.

##### **17.4 Construction Documents Phase**

The RFS (Attachment A) specifies the work to be performed during this phase. In addition, the Designer shall:

17.4.1 Prepare complete bidding documents and forms, including the contractual forms and general conditions which shall be supplied by the Department. The Designer shall only modify these contractual forms and general conditions as authorized by the Department.

17.4.2 Prepare complete construction drawings for architectural, site, landscaping, structural, sanitary, electrical, mechanical, and all other aspects of work necessary to permit firm bids for construction of the Project.

17.4.3 Prepare complete specifications describing all materials, workmanship, and labor to permit firm bids for construction of the Project.

17.4.4 Prepare a detailed cost estimate when the documents are 95% complete in a format approved by the Department.

17.4.5 Meet with the local building inspector to review the construction documents and assist the Authority in obtaining any necessary waivers, approvals, and permits, including a building permit. The Designer shall provide the documentation necessary to obtain such waivers, approvals, and permits and provide technical advice in answer to any questions posed by the permitting authorities.

17.4.6 Prepare, have printed, and then distribute the bid documents meeting all legal requirements at the advertised locations for viewing and pick-up.

17.4.7 Meet with the Authority and the Department a maximum of two times to review the construction documents prior to their being finalized.

## 17.5 Bidding Phase

After the Designer has distributed the bid documents meeting all legal requirements the Designer shall:

- 17.5.1 Receive all inquiries relating to the bid documents and, when necessary, answer questions by preparing and issuing written addenda. The Department shall review and approve all such addenda prior to issuance to bidders.
- 17.5.2 When sub-bids are required:
  - 17.5.2.1 Attend and conduct sub-bid openings.
  - 17.5.2.2 Review sub-bids with the Department for completeness and accuracy.
  - 17.5.2.3 Check references of sub-bidders and make written recommendations as to their qualifications.
  - 17.5.2.4 Prepare and distribute the filed sub-bid tabulation to all prospective bidders. The tabulation shall be reviewed and approved by the Department prior to its issuance to bidders.
- 17.5.3 Attend and conduct the general bid opening.
- 17.5.4 Review with the Department general bids for completeness and accuracy.
- 17.5.5 Review alternates and make written recommendations as to their acceptance.
- 17.5.6 Check references of the two lowest eligible and responsible general bidders and make written recommendations as to their skill and ability to perform the specified work.
- 17.5.7 If the Project has to be re-bid because of a defect in the bid documents or procedures, the Designer shall correct the defect and take the necessary actions for re-bidding the Project on proper bid documents without any additional compensation to the Designer.
- 17.5.8 If the bid of the lowest eligible and responsible bidder exceeds the Construction Budget, the Designer shall, if instructed in writing by the Authority and the Department, revise the scope or quality of the Project for the purposes of bringing the cost within said Budget. All revisions made to the Project under this subparagraph shall be subject to the approval of the Authority and the Department. If the Project is revised and re-bid pursuant to this paragraph, the Designer shall not be entitled to additional compensation for its costs in making revisions or taking the necessary actions for re-bidding the Project.
- 17.5.9 If, due to no fault of the Designer, the advertisement for bids does not appear in the Central Register within 90 calendar days after the approval of the bid documents, the Department shall adjust the Construction Budget to reflect any changes in construction costs due to such bidding delay. Such action shall not affect the Fee for Basic Services.
- 17.5.10 If the Authority awards a construction contract for an amount that exceeds the established Project Construction Budget set out on page one, such an award will not affect the Fee for Basic Services.

17.6 Construction Administration Phase - Obligations During Construction

Following the execution of the Owner-Contractor Agreement, the Designer shall undertake all the obligations set out in the Construction Handbook, including, but not limited to:

- 17.6.1 Administering the Owner Contractor Agreement in accordance with the Construction Contract Documents and any subsequent modifications mutually agreed upon.
- 17.6.2 Hiring a Project Representative, either as an employee of the Designer or as a subcontractor to the Designer, to monitor construction, unless the Department waives this requirement. See paragraph 7.4 for reimbursement.
- 17.6.3 Conducting the pre-construction conference and attending dispute conferences and other meetings (whether in the field or elsewhere) when requested by the Authority or Department.
- 17.6.4 Coordinating and observing tests required by the Contract Documents for Construction or tests otherwise requested by the Designer to determine the extent to which the work conforms to the requirements of the Contract Documents for Construction. If tests are required by the Authority or Department in addition to those required by the Contract Documents for Construction or the Designer, the coordination and observation of these tests shall be compensated under Article 6 Extra Services.
- 17.6.5 Promptly checking and approving or taking other appropriate action with respect to samples, schedules, shop drawings, and other submissions by the General Contractor.
- 17.6.6 Attending periodic job meetings at the Project to observe the quality and progress of the work, and furnishing a written field report to the Department and Authority for every such visit, including minutes of each job meeting.
- 17.6.7 Requiring each sub-consultant or subcontractor to the Designer to make visits to the Project as necessary during the time that construction is occurring on the portion of the work to which the sub-consultant's or subcontractor's services relate and to make a final written report concerning the portion of the work to which that sub-consultant's or subcontractor's services relate.
- 17.6.8 Recommending actions to be taken which may include condemnation or rejection of any work that the Designer determines fails to conform to the Owner-Contractor Contract.
- 17.6.9 Preparing proposal requests for changes, and reviewing proposed change orders. Reviewing and recommending appropriate action and where required, preparing change orders, on all requests for a change in any Contract Document for Construction, including a review of the cost and time of such change. Change order work by the Designer shall be compensated in accordance with Article 8.
- 17.6.10 Reviewing and recommending approval of the General Contractor's applications for payment, including certifying that to the best of the Designer's knowledge, the percentage of work included in the application for payment is accurate and the work performed conforms to the Contract Documents for Construction.
- 17.6.11 Checking the general accuracy and completeness of the as-built information maintained by the General Contractor during Construction.
- 17.6.12 Preparing one (1) preliminary punchlist of incomplete or deficient work items for a sample apartment (where applicable) to establish a standard of acceptable work quality for the project.
- 17.6.13 Performing a substantial completion inspection and preparing one (1) non-monetized punchlist of incomplete or deficient work items.
- 17.6.14 Issuing the Certificate of Substantial Completion of Construction.

## 17.7 Completion Phase

Upon acceptance of the Certificate of Substantial Completion of Construction by the Authority and the Department, the Designer shall administer the Owner-Contractor Contract until the expiration of the one-year construction warranty period, including:

- 17.7.1 Performing one (1) inspection of the work in order to prepare a monetized punchlist with a cost assigned to each incomplete or deficient work item or to determine that the Project is complete.
- 17.7.1 With respect to a completed Project, preparing a Certificate of Final Completion.
- 17.7.3 With respect to a monetized punchlist, preparing a Certificate(s) of Partial Release of Retainage as required.
- 17.7.4 With respect to of a monetized punchlist, re-inspecting the work up to three times in order to determine that the punchlist work is completed.
- 17.7.5 In the case of a monetized punchlist, preparing the Certificate of Final Completion when the punchlist work is completed.
- 17.7.6 Preparing the Contractor's Application(s) and Certificate(s) for Payment as necessary.
- 17.7.7 Attending meetings and dispute conferences as necessary.
- 17.7.8 Obtaining from and checking the general accuracy and completeness of the as-built information maintained by the General Contractor during Construction, and performing the necessary drafting and editing of all record drawings. Upon completion of the required drafting and editing provide one set mylar reproducibles to the Authority. The cost for printing the mylar reproducibles shall be paid for as Reimbursable Expense.
- 17.7.9 Obtaining from the General Contractor all maintenance and operating manuals, occupancy permits, guarantees, and other similar relevant materials.
- 17.7.10 Nine (9) months after the date of substantial completion, performing one (1) site inspection and preparing a list of construction warranty deficiencies.
- 17.7.11 Contacting the General Contractor to ensure that all such warranty deficiencies are being addressed.
- 17.7.12 Performing one (1) site inspection to see that all such warranty deficiencies have been corrected.
- 17.7.13 Evaluation of Contractor  
The Designer shall assist the Authority with providing the written Contractor Evaluations required of the Authority per MGL c.149 §44D(7) at the completion of approximately 50% of the Construction Phase and again within 70 days of the date of Substantial Completion for construction, on forms provided by the Department.

**- End -**

**ATTACHMENT A**

**REQUEST FOR DESIGNER SERVICES**

# ATTACHMENT B

## PARTICIPATION SCHEDULE FOR DESIGNER CONTRACTS BY SOMWBA CERTIFIED MINORITY/WOMEN BUSINESS ENTERPRISES

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

This form shall be submitted to DHCD by the Designer upon execution of the Contract for Designer Services attached hereto.

\_\_\_\_\_ Housing Authority \_\_\_\_\_  
Development Number

DHCD Project No: \_\_\_\_\_

<u>Name of Company</u>	<u>Description of Work</u>	<u>M/WBE</u>	<u>Dollar Value Participation</u>
1. _____	_____	_____	\$ _____
2. _____	_____	_____	\$ _____
3. _____	_____	_____	\$ _____
4. _____	_____	_____	\$ _____
5. _____	_____	_____	\$ _____
6. _____	_____	_____	\$ _____

Dollar Value of MBE Commitment: \$ \_\_\_\_\_

Dollar Value of WBE Commitment: \$ \_\_\_\_\_

Total Dollar Value Commitment: \$ \_\_\_\_\_

Original Contract Amount \$ \_\_\_\_\_

### DESIGNER CERTIFICATION

The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts (unless a waiver or partial waiver has been granted by the Department) and (2) certifies that he/she has read the terms and conditions of the DHCD Designer Contract with regards to MBE/WBE participation and is authorized to bind the Designer to the commitment set forth above.

Date \_\_\_\_\_

\_\_\_\_\_  
Name of Architect/Engineer

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code



# **ATTACHMENT C**

<p><b>M.G.L. c.30 §39R - INTERNAL ACCOUNTING CONTROLS APPLIES TO CONTRACTS OF \$100,000 OR MORE SAMPLE LETTER TO BE PREPARED ON DESIGNER'S LETTERHEAD</b></p>
---

Date

Executive Director  
Enfield Housing Authority  
123 Reservoir Street  
Enfield, MA 01234

RE: Enfield 667-2

Dear:

This letter is being submitted in accordance with Article 15.5.4 of the Contract for Design Services for the above captioned project. Please be advised that our firm has a system of internal accounting controls which assures that:

1. transactions are executed in accordance with management's general and specific authorization;
2. transactions are recorded as necessary, to permit preparation of financial statements in conformity with generally accepted accounting principles, and to maintain accountability for assets;
3. access to assets is permitted only in accordance with management's general or specific authorization; and
4. the recorded accountability for assets is compared with the existing assets as reasonable intervals and appropriate action was taken with respect to any difference.

Sincerely,

# **ATTACHMENT D**

**MGL c.30 §39R – INTERNAL ACCOUNTING CONTROLS  
APPLIES TO CONTRACTS OF \$100,000 OR MORE  
SAMPLE LETTER TO BE PREPARED ON CPA’S LETTERHEAD**

Executive Director  
Enfield Housing Authority  
123 Reservoir Street  
Enfield, MA 01234

RE:

Dear

Please be advised that we have reviewed the Statement of Internal Accounting Controls prepared by the

\_\_\_\_\_ in connection with the  
**Name of Designer**

above-captioned project. This statement is required under M.G.L. c.30 §39R. In our opinion, representations of management are consistent with our evaluations of the system of internal accounting controls. In addition, we believe that they are reasonable with respect to transactions and assets in the amount which would be material when measured in relation to the firm's financial statements.

Sincerely,

(CPA)

**ATTACHMENT E**  
**CONTRACT FOR DESIGNER SERVICES**  
**AMENDMENT NO. \_\_\_\_\_**

**WHEREAS**, the parties, the \_\_\_\_\_ Housing Authority and \_\_\_\_\_, Designer, hereto did enter into an agreement for Designer Services for \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
Description of Work Development Number Date of Contract

**DHCD Project Number:** \_\_\_\_\_

**WHEREAS**, the parties wish to amend said agreement as follows:

<b>Article I - Fee for Basic Services:</b>	<b>Original Contract</b>	<b>After this Amendment</b>
Execution of Contract	\$ _____	\$ _____
Concepts Phase Approval	\$ _____	\$ _____
Schematic Design Phase Approval	\$ _____	\$ _____
Design Development Phase Approval	\$ _____	\$ _____
Construction Document Phase Approval	\$ _____	\$ _____
Construction Contract Award	\$ _____	\$ _____
Substantial Completion of Construction	\$ _____	\$ _____
Final Installment	\$ _____	\$ _____
<b>Total Fee</b>		<b>\$</b>

This amendment is a result of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Article II., Construction Budget:**

Original Budget: \$ \_\_\_\_\_  
Amended Budget \$ \_\_\_\_\_

All other terms and conditions of said contract remain in full force and effect.

**SIGNATURES**

IN WITNESS WHEREOF, the Authority, with the prior approval of the Department, and the Designer have caused this Contract to be executed by their respective authorized officers.

**AUTHORITY**

\_\_\_\_\_  
print name  
\_\_\_\_\_  
print title  
By \_\_\_\_\_  
signature and seal  
Date \_\_\_\_\_

**DESIGNER**

\_\_\_\_\_  
print name  
\_\_\_\_\_  
print title  
By \_\_\_\_\_  
signature and seal  
Date \_\_\_\_\_

**APPROVAL OF DEPARTMENT**

Bureau of Housing Development and Construction  
Department of Housing and Community Development

By \_\_\_\_\_  
name  
\_\_\_\_\_  
title  
Date: \_\_\_\_\_

# ATTACHMENT F

<b>DESIGNER'S AFFIDAVIT OF PAYMENTS TO MINORITY BUSINESS ENTERPRISES (MBE/WBE FORM)</b>
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**Commonwealth of Massachusetts  
Department of Housing and Community Development**

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**TO:** Candace Tempesta, Contracts Specialist  
Department of Housing and Community Development  
100 Cambridge Street – Suite 300  
Boston , MA 02114  
617-573-1507 Fax 617-573-1515

**FROM:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RE:** Contract for \_\_\_\_\_ Housing Authority  
Development No: \_\_\_\_\_  
DHCD Project No; \_\_\_\_\_  
Original Contract Amount: \_\_\_\_\_

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The undersigned certifies under the penalties of perjury that the M/WBE firms listed below have participated and received the following payments from the above Designer for work performed on the above referenced contract.

<u>NAME OF MBE/WBE FIRM</u>	<u>WORK PERFORMED</u>	<u>SUBCONTRACT AMOUNT</u>	<u>TOTAL PAYMENTS</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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Name of Designer

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Signature

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Date